

ASSEMBLY, No. 2740

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 8, 2016

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

SYNOPSIS

Authorizes creation of economic recovery districts; authorizes certain economic recovery district management corporations to issue bonds secured by incentive grants.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/31/2017)

1 AN ACT authorizing certain measures to encourage economic
2 development, amending P.L.2009, c.90, and supplementing
3 P.L.1972, c.134.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 4 of P.L.2009, c.90 (C.52:27D-489d) is amended to
9 read as follows:

10 4. a. The governing body of a municipality wherein is located a
11 qualifying economic redevelopment and growth grant incentive area
12 may adopt an ordinance to establish a local Economic
13 Redevelopment and Growth Grant program for the purpose of
14 encouraging redevelopment projects in that area through the
15 provision of incentive grants to reimburse developers for all or a
16 portion of the project financing gap for such projects. No local
17 Economic Redevelopment and Growth Grant program shall take
18 effect until the Local Finance Board approves the ordinance.

19 b. A developer shall submit an application for a local incentive
20 grant prior to July 1, 2019. A developer that submits an application
21 for a local incentive grant shall indicate on the application whether
22 it is also applying for a State incentive grant. An application by a
23 developer applying for a local incentive grant only shall not require
24 approval by the authority. **[A]** Except as provided in subsection e.
25 of this section, a municipal redeveloper may only apply for local
26 incentive grants for the construction of: (1) infrastructure
27 improvements in the public right-of-way, or (2) publicly owned
28 facilities.

29 c. No local incentive grant shall be finally approved by a
30 municipality until approved by the Local Finance Board. The Local
31 Finance Board shall not approve a local incentive grant unless the
32 application was submitted prior to July 1, 2019.

33 d. In deciding whether or not to approve a local incentive grant
34 agreement the Local Finance Board shall consider the following
35 factors:

- 36 (1) the economic feasibility of the redevelopment project;
- 37 (2) the extent of economic and related social distress in the
38 municipality and the area to be affected by the redevelopment
39 project;
- 40 (3) the degree to which the redevelopment project will advance
41 State, regional, and local development and planning strategies;
- 42 (4) the likelihood that the redevelopment project shall, upon
43 completion, be capable of generating new tax revenue in an amount
44 in excess of the amount necessary to reimburse the developer for
45 project costs incurred as provided in the redevelopment incentive
46 grant agreement;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (5) the relationship of the redevelopment project to a
2 comprehensive local development strategy, including other major
3 projects undertaken within the municipality;

4 (6) the need for the redevelopment incentive grant agreement to
5 the viability of the redevelopment project;

6 (7) compliance with the provisions of P.L.2009, c.90
7 (C.52:27D-489a et al.); and

8 (8) the degree to which the redevelopment project enhances and
9 promotes job creation and economic development.

10 e. Notwithstanding subsection b. of this section, a local
11 incentive grant may provide assistance to a developer in order to
12 enhance its credit for the purpose of securing private financing, or
13 the grant may provide assistance to the developer or economic
14 recovery district, as defined in section 4 of P.L. , c. (C.)
15 (pending before the Legislature as this bill) as payment or security
16 for bonds or negotiable instruments issued pursuant to section 7 of
17 P.L. , c. (C.) (pending before the Legislature as this bill).
18 (cf: P.L.2013, c.161, s.15)
19

20 2. Section 10 of P.L.2009, c.90 (C.52:27D-489j) is amended to
21 read as follows:

22 10. a. The New Jersey Economic Development Authority, or
23 any other State agency, may provide assistance to a developer in
24 order to enhance its credit for the purpose of securing private
25 project financing on more favorable terms.

26 b. For purposes of this section, "assistance" may include
27 authorizing the use of grant proceeds by a developer or economic
28 recovery district, as defined in section 4 of P.L. , c. (C.)
29 (pending before the Legislature as this bill) as payment or security
30 for bonds or negotiable instruments issued pursuant to section 7 of
31 P.L. , c. (C.) (pending before the Legislature as this bill).
32 (cf: P.L.2009, c.90, s.10)
33

34 3. Section 12 of P.L.2009, c.90 (C.52:27D-489l) is amended to
35 read as follows:

36 12. a. A municipality may adopt an ordinance creating a
37 municipal redevelopment utility under the name and style of "the
38 _____ redevelopment utility," with all or any significant part
39 of the name of the municipality inserted. The redevelopment utility
40 shall be a municipal public utility for the purposes of Title 40A of
41 the New Jersey Statutes.

42 b. The purpose of every redevelopment utility shall be to
43 receive revenues collected pursuant to section 11 of P.L.2009, c.90
44 (C.52:27D-489k) and to use those revenues as payment of incentive
45 grants, and for other local purposes that may be approved by the
46 Local Finance Board, as that board deems necessary or useful.

47 c. If a municipality does not create a municipal redevelopment
48 utility, then any revenues collected pursuant to section 11 of

1 P.L.2009, c.90 (C.52:27D-489k) and any grants received to pay
2 incentive grants shall be treated as riders in the municipal budget
3 pursuant to N.J.S.40A:4-36.

4 d. A municipal redevelopment utility that is designated as an
5 economic recovery district management corporation, as defined in
6 section 4 of P.L. , c. (C.) (pending before the Legislature as this
7 bill) shall have the authority to issue and assign bonds, pursuant to
8 pursuant to section 7 of P.L. , c. (C.) (pending before the
9 Legislature as this bill).

10 (cf: P.L.2009, c.90, s.12)

11
12 4. (New section) For purposes of P.L. , c. (C.) (pending
13 before the Legislature as this bill):

14 "Agreement" means a financial agreement for a payment in lieu
15 of taxes.

16 "Developer" means a developer as defined in section 3 of
17 P.L.2009, c.90 (C.52:27D-489c).

18 "Economic recovery district management corporation" means an
19 entity authorized and created by municipal ordinance or
20 incorporated pursuant to Title 15A of the New Jersey Statutes and
21 pursuant to section 5 of P.L. , c. (C.) (pending before the
22 Legislature as this bill) and designated by municipal ordinance to
23 levy and collect a special assessment within a special improvement
24 district, and may include a municipal redevelopment utility
25 established pursuant to section 12 of P.L.2009, c.90 (C.52:27D-
26 489l).

27 "Economic recovery district" or "district" means a district
28 designated by a municipality, by ordinance, pursuant to section 5 of
29 P.L. , c. (C.) (pending before the Legislature as this bill) to
30 promote the economic revitalization of the municipality through the
31 encouragement of a project financed in part by an incentive grant
32 received as part of the Economic Redevelopment and Growth Grant
33 program established pursuant to P.L.2009, c.90 (C.52:27D-489a et
34 al.).

35 "Improvement" means the purchasing, leasing, condemning, or
36 otherwise acquiring of land or other property, or an interest therein,
37 in the economic recovery district or as necessary for a right-of-way
38 or other easement to or from the district; the relocating and moving
39 of persons displaced by the acquisition of land or property; the
40 rehabilitation and redevelopment of land or property, including
41 demolition, clearance, removal, relocation, renovation, alteration,
42 construction, reconstruction, installation or repair of a building,
43 street, highway, alley, service or other structure or improvement;
44 the acquisition, construction, reconstruction, rehabilitation, or
45 installation of parking and other public facilities and improvements,
46 except buildings and facilities for the general conduct of
47 government and schools; and the costs associated therewith
48 including the costs of an appraisal, economic and environmental

1 analyses or engineering, planning, design, architectural, surveying
2 or other professional services necessary to effectuate the
3 improvement.

4 "Incentive grant" means an incentive grant as defined in section
5 3 of P.L.2009, c.90 (C.52:27D-489c).

6 "Special assessment" means an assessment upon the lands or
7 improvements on such lands, or both, in the economic recovery
8 district benefitted by improvements undertaken pursuant to P.L. ,
9 c. (C.) (pending before the Legislature as this bill) that are
10 assessed pursuant to chapter 56 of Title 40 of the Revised Statutes,
11 R.S.40:56-1 et seq. except as otherwise provided in P.L. ,
12 c. (C.) (pending before the Legislature as this bill).

13

14 5. (New section) a. A municipality that has adopted or adopts an
15 ordinance authorizing the establishment of a special improvement
16 district pursuant to section 6 of P.L.1972, c.134 (C.40:56-71), and
17 in which there is a redevelopment project receiving assistance from
18 an incentive grant received as part of a State or local Economic
19 Recovery and Growth Grant program established pursuant to
20 P.L.2009, c.90 (C.52:27D-489a et al.), may designate, by ordinance,
21 any portion or all of that district containing the redevelopment
22 project for which a developer is receiving assistance as an economic
23 recovery district. A municipality may create, by separate
24 ordinances, more than one district.

25 b. The governing body of a municipality creating an economic
26 recovery district pursuant to this section shall establish an economic
27 recovery district management corporation to provide administrative
28 and other services to benefit the businesses, employees, residents,
29 and consumers in the special improvement district. The mayor or
30 other chief executive officer of the municipality shall appoint the
31 economic recovery district management corporation consisting of
32 seven or more persons, at least a majority of whom shall be owners
33 or occupants of properties adjoining a pedestrian mall or included in
34 a special improvement district, as the case may be, or
35 representatives of these owners or occupants, to advise the
36 governing body in connection with the acquisition, construction,
37 and improvement of a pedestrian mall, or the acquisition and
38 construction of improvements for a special improvement district.
39 No economic recovery district management corporation shall
40 receive any funds or exercise any powers pursuant to the provisions
41 of P.L. , c. (C.) (pending before the Legislature as this bill),
42 unless the board of directors of that corporation shall include at
43 least one member of the governing body of the municipality.

44

45 6. (New section) a. A municipality that has established an
46 economic recovery district pursuant to section 4 of P.L. , c. (C.)
47 (pending before the Legislature as this bill) may adopt an ordinance
48 to authorize an economic recovery district management corporation

1 to levy and collect, within the district, a special assessment that
2 shall not exceed the difference between the incentive grant and the
3 debt service for any bonds issued by the economic recovery district
4 management corporation pursuant to section 7 of P.L. , c. (C.)
5 (pending before the Legislature as this bill) in a given year. The
6 special assessment shall be levied for the purpose of addressing
7 debt service covering interest or principal, or both, on any bonds
8 issued by the economic recovery district management corporation
9 pursuant to section 7 of P.L. , c. (C.) (pending before the
10 Legislature as this bill),

11 b. The ordinance shall be a valid and binding ordinance of the
12 municipality. The ordinance shall continue in force and effect until
13 repealed by the governing body. The municipality may also
14 provide and covenant by ordinance that the ordinance authorizing
15 the special assessment will not be amended so as to repeal or reduce
16 the special assessment while bonds issued pursuant to section 7 of
17 P.L. , c. (C.) (pending before the Legislature as this bill) are
18 outstanding, unless the resolution authorizing the bonds shall
19 provide otherwise. Such covenant shall constitute a valid and
20 legally binding contract between the municipality and bondholders.

21
22 7. (New section) a. In addition to the powers granted to a district
23 management corporation pursuant to section 17 of P.L.1984, c.151
24 (C.40:56-83), an economic recovery district management
25 corporation that is a municipal redevelopment utility, created
26 pursuant to section 12 of P.L.2009, c.90 (C.52:27D-4891) shall
27 have the power to issue negotiable bonds or other obligations
28 secured by an incentive grant received by a project and by a special
29 assessment authorized by ordinance in accordance with section 6 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).
31 Bonds so issued shall be to provide financing, refinancing, or
32 reimbursement for the cost of the design, construction, establishment,
33 extension, alteration, or acquisition of adequate storm drainage
34 systems, sewers, water systems, roads, bridges, culverts, tunnels,
35 streets, sidewalks, lighting, parking, parks and recreation facilities,
36 libraries, schools, transit facilities, solid waste facilities, convention
37 centers, conference centers, visitors' centers, infrastructure
38 improvements located in or supporting a transit-oriented development,
39 renovation, rehabilitation, and repair of existing buildings, building
40 systems, and components for existing residential condominiums
41 designated as affordable housing and other infrastructure
42 improvements as necessary, whether situated within the special taxing
43 district or outside the economic recovery district if the infrastructure
44 improvement is reasonably related to other improvements within the
45 special taxing district, for the development and utilization of the land,
46 each with respect to any defined geographic region within the
47 economic recovery district.

48 b. To implement the authority to issue bonds conferred upon the

1 district management corporation by this section, the governing body of
2 the municipality in which the economic recovery district is located
3 shall adopt an ordinance or resolution that:

- 4 (1) Specifies and describes the proposed undertaking;
5 (2) Specifies the maximum principal amount of bonds to be issued;
6 and
7 (3) Agrees to a covenant to levy upon all real and personal property
8 within the special taxing district special taxes in rate and amount at
9 least sufficient in each year in which any of the bonds are outstanding
10 to provide for the payment of the principal of and the interest on the
11 bonds.

12 c. The bonds and notes issued by the district management
13 corporation pursuant to this section shall be non-recourse
14 obligations, and shall not be direct and general obligations of the
15 municipality, and the municipality shall not be obligated to levy and
16 collect a tax sufficient in an amount to pay the principal and interest
17 on the bonds and notes when the same become due and payable.
18 The provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds
19 or other obligations issued or authorized pursuant to this section and
20 those bonds or other obligations shall not be considered gross debt
21 of the municipality on any debt statement filed in accordance with
22 the "Local Bond Law," N.J.S.40A:2-1 et seq., and the provisions of
23 chapter 27 of Title 52 of the Revised Statutes shall not apply to
24 such bonds.
25

26 d. The proceeds of any incentive grant or payments in lieu of
27 taxes made by a developer under an agreement authorized pursuant
28 to the Economic Redevelopment and Growth Grant program and
29 special assessments may be assigned directly to the corporation or
30 the trustee for the bonds as payment or security for the bonds.
31 Notwithstanding any law to the contrary, the assignment shall be an
32 absolute assignment of all the municipality's right, title, and interest
33 in the payment in lieu of taxes and special assessments, or portion
34 thereof, along with the rights and remedies provided to the
35 municipality under the agreement including, but not limited to, the
36 right of collection of payments due. Payments in lieu of taxes and
37 special assessments shall not be included in the general funds of the
38 municipality, nor shall they be subject to any laws regarding the
39 receipt, deposit, investment or appropriation of public funds and
40 shall retain such status notwithstanding enforcement of the payment
41 or assessment by the municipality or assignee as provided herein.

42 e. The proceeds from the sale of the bonds and any funds
43 provided by any department of the State, or by any authority created
44 by the State or bi-state authority, shall not require compliance with
45 public bidding laws, including the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other statute, when the
46 redeveloper shall undertake any improvements described in
47 subsection a. of this section.
48

1 8. (New section) The special assessment levied and collected
2 by the economic recovery district shall be appropriated to any
3 shortfall between the debt service and the incentive grant in a given
4 year. In any year in which a portion of the special assessment
5 collected annually is not appropriated or expended by the district
6 for this purpose, the assessment shall be expended for an
7 improvement in the district as defined in section 4 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill).

9
10 9. (New section) a. The special assessments required to be paid
11 to the economic recovery district management corporation pursuant
12 to section 6 of P.L. , c. (C.) (pending before the Legislature as
13 this bill) shall be a continuous lien on the land against which the
14 ordinance is recorded on and after the date of recordation of the
15 ordinance. All subsequent assessment payments, interest, penalties,
16 and costs of collection which thereafter fall due or accrue shall be
17 added and relate back to and be a part of the initial lien. Upon
18 recordation of the ordinance and agreement, payments in lieu of
19 taxes shall constitute a municipal lien within the meaning, and for
20 all purposes, of law.

21 b. If revenue bonds or other obligations are issued by the
22 corporation in order to finance or refinance the construction,
23 reconstruction, repair, alteration, improvement, and development of
24 any infrastructure, or parking or transportation facilities, or work
25 that reduces, abates or prevents environmental pollution, or other
26 improvements that provide a public benefit within or to an
27 economic recovery district in accordance with section 7 of P.L. ,
28 c. (C.) (pending before the Legislature as this bill), the
29 municipality or the redeveloper may record, either simultaneously
30 or at different times, any ordinance adopted by the municipality
31 relating to the payment in lieu of taxes agreement or special
32 assessments and, either simultaneously with the ordinance or at
33 different times, a copy of the agreement or agreements. The
34 ordinance, when recorded, shall contain a legend at the top of the
35 front page substantially as follows:

36 "THIS ORDINANCE SECURES BONDS OR OTHER
37 OBLIGATIONS ISSUED IN ACCORDANCE WITH THE
38 PROVISIONS OF P.L. , c. (C.) (pending before the Legislature
39 as this bill) AND THE LIEN HEREOF IN FAVOR OF THE
40 OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A
41 MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-
42 MUNICIPAL LIENS HEREAFTER RECORDED."

43 c. Notwithstanding any law to the contrary, upon recordation
44 of both the ordinance and any accompanying agreement and upon
45 the issuance of bonds or other obligations, the lien thereof shall be
46 perfected for all purposes in accordance with law and the lien shall
47 thereafter be superior to all non-municipal liens thereafter recorded
48 or otherwise arising, without any additional notice, recording,

1 filing, continuation filing, or action, until the payment in full of the
2 bonds or other obligations. The lien thereby established shall apply
3 not only to the bonds and other obligations initially issued, but also
4 to any refinancing or refunding thereof, as well as to any additional
5 bonds and other obligations thereafter issued on a parity therewith
6 in accordance with the provisions of the original documents
7 securing the initial bonds and other obligations; provided, however,
8 that in the event any ordinance or agreement is amended or
9 supplemented in a way which increases the amount of payments in
10 lieu of taxes or special assessments, the lien as to that increase shall
11 be perfected and apply upon the recordation of the amended or
12 supplemented ordinance and agreement (including the above-recited
13 legend). Except as set forth in this section, no amendment or
14 supplement to the ordinance or agreement thereafter recorded shall
15 affect the perfection or priority of the lien established upon original
16 recordation thereof.

17 d. Upon the final payment in full of any bonds or other
18 obligations secured as provided in this section and section 7 of
19 P.L. , c. (C.), the lien established hereby shall terminate, and
20 the municipality shall record a notice to that effect.

21
22 10. This act shall take effect immediately.
23
24

25 STATEMENT

26
27 In July 2009, the New Jersey Legislature enacted the “Economic
28 Stimulus Act of 2009,” N.J.S.A.52:27D-489a et al., which
29 established the Economic Redevelopment and Growth (“ERG”)
30 grant program. The program provides incentive grants to
31 developers that reimburse a portion of taxes generated through new
32 development projects. This bill would supplement and amend the
33 Stimulus Act to authorize municipalities to monetize the income
34 stream provided by the ERG up front, creating a powerful tool to
35 encourage desirable new development.

36 Under this legislation, a municipality may establish a special
37 improvement district covering an area containing a project that has
38 received a redevelopment incentive grant as part of an ERG
39 program. By ordinance, a special assessment lien levied on the
40 project would secure the project’s obligation to cover any shortfall
41 between the incentive grant and debt service on bonds issued by the
42 district utility. In the event that revenues reimbursed to the
43 developer as part of the grant are less than debt service, which
44 would be especially likely in the early years of the project, the
45 special assessment obligation would be triggered. If the special
46 assessment obligation goes unpaid, a lien on the property superior
47 to other liens is created. Ultimately, lenders have a remedy to
48 recover those shortfall payments through the tax foreclosure

1 process. Under this system, the developer of the redevelopment
2 project assumes the risk of any shortfall in tax increment revenues.
3 As the party solely in position to successfully implement the
4 project, the project developer either benefits from the ERG or
5 suffers the shortfall for failure.